

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

MCLANE SUNEAST, INC. d/b/a
MCLANE SOUTHERN CALIFORNIA ^{1/}

Employer

and

Case No. 31-RC-8037

WHOLESALE AND RETAIL FOOD
DISTRIBUTION, LOCAL 63,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO ^{2/}

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{3/}
3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{4/}

INCLUDED: All full-time and regular part-time warehouse employees, cigarette and Sam's Candy employees, plant maintenance employees, plant clerical and sanitation employees employed by the Employer at its facilities located at 4472 Georgia Blvd., 4695 Hallmark and 4345 Hallmark in San Bernardino, California

EXCLUDED: All other employees, salespersons, drivers, drivers-in-training, drivers' helpers, hostlers, transportation shop employees, office clerical employees, professional employees, team leaders, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION^{5/}

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a

strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **WHOLESALE AND RETAIL FOOD DISTRIBUTION, LOCAL 63, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.**

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before **November 13, 2001**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary

circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 20, 2001.

DATED at Los Angeles, California this 6th day of November, 2001.

/s/ James J. McDermott
James McDermott, Regional Director
National Labor Relations Board
Region 31

FOOTNOTES

- 1/ The name of the Employer appears as corrected at the Hearing.
- 2/ The name of the Petitioner appears as corrected at the Hearing.
- 3/ The Employer, McLane SunEast Inc, d/b/a McLane Southern California, a Texas corporation, is engaged in the warehousing, distribution and sale of food products and non-food grocery products at its facility in San Bernardino, California. During the past 12 months, a representative period, the Employer sold and delivered goods valued in excess of \$50,000 directly to customers located outside the State of California. Thus, the Employer satisfies the statutory jurisdictional requirement as well as the Board's discretionary standard for asserting jurisdiction herein. *Siemons Mailing Service*, 122 NLRB 81 (1959).
- 4/ The Employer operates a distribution center in San Bernardino, California where it receives, warehouses, and distributes food products and non-food grocery products. The Employer's primary customers are convenience stores. The Employer's main facility is located at 4472 Georgia Blvd. The Employer also operates from two other nearby facilities: 1) the Hallmark facility at 4695 Hallmark, where it houses cigarettes and 2) the Perrigo facility at 4345 Hallmark, where it houses Sam's Candy product.

The Petitioner seeks to represent a unit of all full-time and regular part-time warehouse employees, cigarette and Sam's Candy employees, plant maintenance employees, plant clerical employees and sanitation employees employed by the Employer at its facilities located at 4472 Georgia Boulevard, 4695 Hallmark and 4345 Hallmark in San Bernardino, California. The Employer asserts that the unit must also include drivers, drivers-in-training, drivers' helpers, hostlers and transportation shop employees. There is no collective-bargaining history involving the employees in the unit sought by the Petitioner.

The Board recognizes that there often is more than one way in which employees of a given employer may appropriately be grouped for the purposes of collective bargaining. The Board does not require a petitioner to seek any particular appropriate unit. Rather, the Board only considers whether the unit requested is *an* appropriate unit, even if it may not be the optimum or most appropriate unit for collective bargaining. *Overnite Transportation*, 322 NLRB 723 (1996). In determining an appropriate unit in a representation case, the Board first considers the Union's petition and whether that unit is appropriate. It is only when the petitioned-for unit is not appropriate that the Board considers the alternative units proposed by the Employer. *P.J. Dick*, 290 NLRB 150, 151 (1988). Thus, it is not my role to determine whether the unit requested by the Petitioner or the broader unit proposed by the Employer would be the most appropriate unit. Rather, I must determine whether or not the unit requested by the Petitioner is *an* appropriate unit.

In determining whether a unit requested by a petitioner is an appropriate unit, the Board focuses on whether the employees in that unit share a distinct community of interest. The Board considers the following factors in evaluating their community of interest: wages and method of compensation; hours of work; employment benefits; supervision; qualifications, training and skills; and job functions. The Board also considers the amount of working time spent away from the facility; the amount of contact with other employees; the integration of work functions with those of other employees; the amount of interchange with other employees; and the history of bargaining. *Overnite Transportation*, supra 322 NLRB at 724.

The Employer operates an integrated distribution process. There is a Distribution Center Manager who is responsible for the warehouse employees (including loaders/checkers, off-loaders, forklift operators, selectors, shuttlers, stockers and receivers), the cigarette and Sam's Candy employees, plant maintenance employees, plant clericals and sanitation employees. For convenience, these

employees, who the Petitioner seeks to represent, will be referred to collectively as distribution center employees.

Although cigarettes and Sam's candy may be delivered directly to the nearby Hallmark and Perrigo facilities, generally, product is received at the main facility, where it is unloaded by individuals who are not employed by the Employer. A receiver employed by the Employer verifies the quantities in the shipment and produces receiving labels that are attached to the pallets of product. A shuttler or forklift operator moves the product to the correct storage area and a stocker puts the product away in the proper racks.

When product is ready to be distributed, selectors select the appropriate merchandise from the storage areas and forklift operators or shuttlers move the product. Some items, such as single-sale items and general merchandise products, may be placed into a tote (plastic container) and placed onto a conveyor system that has a sortation system with lasers that read bar codes on tags to determine where the cases should be directed. Product is off loaded from the conveyor system and placed onto pallets. Shuttlers with pallet jacks move pallets to the correct staging area. There are special areas for frozen product, cooler products and dry goods. Hostlers transport cigarettes and Sam's Candy products between the main facility and the two nearby facilities.

After items are staged on a loading dock, a loading team comprised of a loader and a checker check the load to ensure its integrity and accuracy. They work with a stop manifest that reveals the stores on the run for a particular trailer, the sequence of the stops, and the quantities to be loaded for each stop. The stop manifest serves as a communication between the loaders, the drivers, and the billing clerks. Generally, frozen goods and cooler products are loaded first. Then the trailer is moved to an area where dry goods are loaded. After the appropriate goods are loaded, a dispatcher or other supervisor radios the hostler that the trailer is ready to be moved. Or, the loader may signal that the trailer is ready to be moved by

closing the gate of the trailer. After the trailer is completely loaded, the loader locks the trailer door and brings the key to the transportation area.

There is a Transportation Manager who is responsible for the transportation department, including drivers, drivers-in-training, drivers' helpers, hostlers and transportation shop employees. There are about 71 drivers. In contradistinction to the distribution center employees, the drivers wear uniforms, have direct contact with customers and spend most of their work time away from the Employer's facilities. When the drivers report to work, they perform pre-trip inspections of their tractors and hook their tractors up to a loaded trailer. Then they go to the dispatch area to retrieve their paper work. They usually use the drivers' room, which is next to the dispatch area in the main facility, to evaluate the "driver's load packet." The driver's load packet includes a load manifest, invoices, Hazmat forms for certain items, credit memos, pick-up notices relating to authorized returned goods, other special instructions and a staging diagram made by the loaders to communicate how the trailer was loaded. The drivers then leave to deliver the product.

While on their routes, the drivers have interactions with customers at each stop. They issue credit slips for damaged or missing items and for returned goods. The drivers bring back to the facility empty totes, damaged goods, and returned goods. When a driver returns to the facility, he works with a distribution center employee in checking the returned merchandise. On occasions, the drivers make a "back haul," which involves picking up product directly from vendors. A distribution center employee unloads the back haul. The Employer states in its brief that "receivers, often with the assistance of drivers, off-load [back hauls]." The record does not establish that drivers "often" assist in off-loading back hauls. The testimony to which the Employer cites states that although drivers can assist in the off-loading of back hauls and have done so in the past, "it's not something that happens every day..." However, there is a load that often returns on Friday nights

from Arizona after the off-loaders have gone home and, apparently, the driver of that route does off-load the product from that run.

Drivers' helpers and drivers-in-training are in the transportation department. The drivers' helpers are employees who go with drivers on their routes to assist with the loads. There are five drivers' helpers.

The drivers-in-training are employees of the Employer who are enrolled in the Employer's driver-in-training program, which is a six month long program. Employees who have been employed by the Employer for at least one year, have a good attendance record, and have not received a final warning notice are eligible to participate. The applicants must be recommended by their current supervisor and the Distribution Center Manager. They also are interviewed by the Transportation Manager and the Vice President of Distribution. They are given opportunities to ride along with a driver to see if they really want to do that sort of work. Those who are selected to become drivers-in-training attend a four week outside training program to receive their Class A Commercial Driver's License ("CDL"). The Employer "loans" the employee 90% of the cost of that training, which debt is forgiven if the employee remains employed by the Employer as a driver for at least two years. After a driver-in-training receives a permit, he drives along with experienced drivers. The drivers-in-training rotate into a hostler position for at least one month before they are treated as full-fledged drivers. The drivers-in-training are paid at Grade 3 while working as a hostler or drivers' helper. Of the approximately 71 current drivers, 9 or 10 of them graduated from the driver-in-training program.

The hostlers also are in the transportation department. The hostlers shuttle trailers between different areas of the main facility (including the freezer/cooler and dry product areas, the storage lot, the receiving area, and the off-loading area) and to and from the Hallmark and Perego buildings. The hostlers turn on the refrigeration/freezing units ("reefer units"), which are in the front of the trailers. There are

two or three permanent hostler positions. In addition, there is one hostler position that drivers-in-training rotate through as part of their training.

The employees in the transportation shop maintain and repair the Employer's tractors and trailers, the cars for the sales team, and the distribution center maintenance shop van. They also maintain and repair the reefer units in the trailers. They primarily work in the mechanic shop, which is located on the grounds of the Employer's main facility. The mechanics use lockers located near the bays in the mechanic shop. Three of the six mechanics possess Class A CDLs. They serve as back-up hostlers and have filled in for drivers when necessary. They handle hot shot deliveries (deliveries of product needed right away by customers) once or twice a month. The transportation shop team leader supervises the work

of the six mechanics that work there. One of the distribution center employees is assigned to work at the transportation shop washing the totes. The Employer recently posted two positions in the transportation shop: a tire-man position and a fueler position. Several distribution shop employees have applied for those positions. The transportation shop has worked with the distribution center's maintenance shop on several projects, including work on the conveyor and on cigarette cages. The record does not reveal when these projects occurred or how long they lasted.

The Employer has one human resources department, which it calls its "People Department." All employees receive the same employee handbook and are covered by the same policies and procedures.

The distribution center employees are supervised by different immediate supervisors than the employees in the transportation department and different department managers are ultimately responsible for their employment. The Transportation Manager is responsible for the drivers, drivers' helpers, drivers-in-training, hostlers and transportation shop employees. The dispatchers and the

transportation shop team leader, who are stipulated to be supervisors, report to the Transportation Manager. The Distribution Center Manager has responsibility over the employees in the distribution center who are in the requested unit. There are four supervisors who report to her. The People Department Manager and the department managers interview potential new employees. Thus, the Transportation Manager interviews drivers, driver helpers, drivers-in-training, hostlers, and transportation shop employees. And, the Distribution Center Manager interviews applicants for positions as distribution center employees. Employees are evaluated by the supervisors within their departments. The Distribution Center Manager and the supervisors under her make the decision to terminate distribution center employees and the Transportation Manager makes termination determinations concerning employees in the transportation department.

All employees in the petitioned-for unit are paid on an hourly basis and punch a time clock. The Employer has a wage scale with four grades. For the distribution center employees, the entry level wage at Grade 1 is \$7.75/hour and the entry level wage at Grade 4 is \$15.50/hour. The sanitation employees are paid at Grade 1; the off loaders are paid at Grade 2; the selectors and material handling equipment operators are paid at Grade 3 and the loaders are paid at Grade 4.

The mode of compensation for the drivers is significantly different than the mode of compensation for the distribution center employees. The drivers are paid based on a formula that is determined by the volume of the load, as well as the miles driven and number of stops on the run. Since the drivers are not paid on an hourly basis, they generally do not clock in. There are occasions, however, when drivers are paid on an hourly basis at a Grade 3 level. For example, when drivers attend meetings or training sessions, they are paid on an hourly basis at a Grade 3 rate of pay. Also, they are paid on an hourly basis at Grade 3 for their waiting time if there is a delay in the loading of their trailer and during periods of time that they perform other types of work while on light duty due to an injury. The average

driver earns approximately \$15,000 to \$20,000/year more than distribution center employees earn. The drivers-in-training, driver helpers, and yard hostlers are paid on an hourly basis at a Grade 3 level. The transportation shop employees also are paid on an hourly basis.

All employees receive the same benefits, including: medical insurance; dental/vision/prescription insurance; life insurance; disability insurance, bereavement pay; vacation and sick pay; and employee stock purchase options. They also participate in the same leave of absence program. All employees are entitled to a discount at a fitness center and they all are invited to participate in company-sponsored social events, such as a fishing trip, an annual holiday party and an annual company picnic. Every non-salaried employee is eligible for an order quality bonus. All non-exempt employees are invited to participate in a cook-out with prizes when the Employer achieves 100,000 hours without lost time due to injuries. There is a team safety bonus for distribution center employees. Drivers participate in a different safety bonus program. There is a special annual banquet for the drivers to recognize safe driving. Transportation shop employees, hostlers, drivers' helpers and drivers-in-training are invited to the drivers' dinner.

All employees wear the same type of identification badge. The badge provides employees with access to the Employer's parking lot and other facilities. The badge also serves as a time card for those employees who punch a time clock.

There is a significant difference in the hours worked by the drivers, drivers' helpers and drivers-in-training and those worked by employees in the distribution center. The distribution center operates from about 8 p.m. on Sunday through mid-morning the following Saturday. Generally, there is no work from about Saturday noon until Sunday at 8:00 p.m.. The distribution center employees work one of three daily 8-hour shifts. The cigarette and Sam's Candy employees work during one early 8-hour shift that starts at 3:00 a.m.. The drivers work at different times during a 24-hour period. They are required by the Department of

Transportation (“DOT”) to work less than 15 hours in a day. Usually, the drivers work about 13½ to 15 hours on a run. If there are two drivers assigned to a run, the run can last over 15 hours. The hours of the drivers’ helpers and the drivers-in-training match the drivers. The hostlers and the transportation shop employees work over three shifts.

All new employees attend the same 3-day new employee orientation session. At that orientation, they receive training concerning the Employer’s policies and procedures, drug/alcohol and sexual harassment policies, and correct lifting techniques. They also receive instruction about the Employer’s distribution process. The new employees observe work in progress in the various distribution stages, including receiving, stocking and selection. The material handling equipment operators in the distribution center are trained and certified to use different types of equipment (e.g. stand up pallet jack, forklift, boy-ups, utility forklift, turret truck, and battery changer). They wear tags showing which equipment they are certified to use.

The drivers, hostlers, drivers-in-training and mechanics in the transportation department have significantly different additional training and skills than the employees in the distribution center. The drivers are required to possess a Class A CDL and must comply with the applicable DOT regulations, including those relating to medical certifications and random drug testing. The drivers-in-training are in the process of earning a Class A CDL. The hostlers also are required to possess a Class A CDL since they drive on city streets while transporting items to and from the facilities on Hallmark. Although they are not required to do so, some of the employees in the transportation shop also possess a Class A CDL. Transportation shop employees are certified to work on diesel engines and refrigeration units.

There are monthly meetings for all employees. Most employees, including the transportation shop employees and the hostlers, attend meetings during the week.

The drivers, driver helpers, and drivers-in-training attend their monthly meetings on Saturdays. These Saturday meetings last longer than the weekday meetings because they often involve matters relating to customers.

The record reveals that there were 200 transfers between positions within the last three years. Some of those transfers involved individuals who transferred more than one time. The record does not reveal how many of those transfers were between positions in the distribution center and positions in the transportation department. Therefore, this figure does not necessarily indicate a significant number of transfers between positions in the requested unit and positions in the transportation department. The record does reveal that some distribution center employees have transferred to positions in the transportation department by participating in the driver-in-training program. Also, some employees have worked as drivers' helpers before entering the driver-in-training program. Of the 71 current drivers, only nine or ten have gone through the driver-in-training program.

The record reveals some contact between employees in the transportation department and distribution center employees. The drivers have contact with distribution center employees when they check in merchandise that is returned to the facility. However, since they spend most of their time on the road, they do not have significant contact with distribution center employees. While at the facility, the drivers use a drivers' room near the dispatch office to review their paper work. They have access to a bathroom and lockers in that area. The drivers' helpers and drivers-in-training also spend most of their time making deliveries and have little contact with the distribution center employees. The transportation shop employees primarily work in their own shop, which is located in a separate building outside of the distribution center. They use restrooms and lockers in the transportation shop. The hostlers may have brief interactions with loaders when they move the trailers from one location to the next.

The Employer has utilized cross-functional teams of employees for various projects. For example, the Employer used a cross-functional team, including loaders and drivers, to evaluate the feasibility of using cooler boxes on trailers to save on fuel used for the refrigeration units. A loader went out on a load with a driver as part of the evaluation process. There also have been cross-functional teams working on safety and fundraising projects and on projects to devise more theft resistant cigarette deliveries and to devise better off loading techniques. The record does not reveal when these cross-functional projects took place, how many employees were involved in them, or how long the projects lasted.

Obviously, the functions performed by the drivers, who spend the vast majority of their time delivering product and interacting with customers, differ significantly from the functions performed by the distribution center employees. There are some minor examples of overlapping functions. For example, some of the drivers drive “hot shot” deliveries, which occur when customers need certain products right away. There are two drivers who tend to make these hot-shot deliveries. These drivers, who had been loaders before becoming drivers, often load their own trucks for the hot-shot deliveries.

There are occasions when distribution center employees go on runs with drivers. New loaders are routinely sent to ride with drivers several times. They do this for training purposes, to observe how the efficiency of the deliveries are affected by the quality of the loading and how customers react to problems caused by mistakes in the distribution center. During a period of time when there was a group of newly-hired loaders, loaders were sent out more frequently with drivers. However, now that the loaders are experienced, they only go with drivers on occasions when the Employer is “short-handed” or when they are considering entering the drivers-in-training program. The record does not reveal how often distribution center employees accompany drivers because the Employer is short handed. The employees who are considering entering the driver-in-training

program, go on a few runs to observe the nature of the work and to be better able to determine if they really want to become a driver.

Drivers who are on modified duty assignments due to an injury may be assigned to distribution center work. Also, when drivers are short on hours and desire additional work, they may volunteer to work in the distribution center. This happens most often during the winter when business is slower. The drivers are paid on an hourly basis at Grade 3 when they perform this work. The record is unclear as to how frequently this happens. It is clear, however, that although some drivers may work in the distribution center when they wish to increase their hours, they are not required to do so.

After evaluating the community of interest factors and the relevant case law, I conclude that the petitioned-for employees share a sufficiently distinct community of interest from other employees as to warrant a separate unit. The community of interest between the transportation employees and the distribution center employees is not so great as to render a unit that excludes them inappropriate for bargaining.

With respect to the drivers, I particularly note that they are separately supervised, are paid by a different mode of compensation, earn significantly more than the distribution center employees, possess specialized skills and training, are required to possess a Class A CDL and abide by DOT regulations, perform unique functions, and work significantly different hours than the distribution center employees. Moreover, contrary to the assertion by the Employer, I conclude that the record does not establish substantial regular interchange on a temporary or permanent basis. Nor does the record establish significant regular contact between the drivers and distribution center employees.

I do note that drivers may perform some work in the distribution center when they want to work extra hours. However, the Board has found units that exclude drivers to be appropriate in circumstances where the drivers, on occasion, perform

the work of other unit employees. See *Ballentine Packing Co.*, 132 NLRB 923 (1961), in which the Board found a separate unit of drivers and a separate unit of production and maintenance employees to be appropriate although the drivers work at times inside the plant when there is no driving to do. In this regard, the Board noted that the drivers regularly spend a majority of their time performing truckdriving duties and comprise a functionally distinct group of employees whose interests and conditions of employment differ from those of the production and maintenance employees. Id at 924. See also *Reichhold Chemicals, Inc.*, 126 NLRB 619 (1960), in which the Board found that the truckdrivers constitute a functionally distinct group and may constitute a separate appropriate unit, notwithstanding the fact that the drivers, who are paid on a mileage bases, occasionally accept hourly-paid work in the plant usually performed by production and maintenance employees in order to avoid a brief layoff when work is slow.

More recently, in *Home Depot USA*, 331 NLRB No. 168 (August 25, 2000), the Board reversed an Acting Regional Director who had dismissed a petition for a unit of drivers and dispatchers because she had concluded that they did not share a sufficient community of interest to constitute an appropriate unit. The Board acknowledged that all employees, including drivers, are paid on an hourly basis, punch a time clock, are eligible to participate in company-wide benefit programs, attend the same 5-day new employee orientation session, are subject to the same work rules, attend the same meetings and social events and use the same parking, restroom and break facilities. Furthermore, the drivers are not separately supervised. The Board also noted that the drivers and other employees have a degree of overlapping job function and employee interchange. In fact, the drivers spend up to 30 to 40 percent of their time pulling merchandise for delivery, a function usually performed by “pullers.” Also, on occasion, hourly employees accompany drivers to assist in a delivery and drivers may be assigned to work inside the store instead of driving if driving conditions are hazardous, if the driver is waiting for a certification, or if the volume of deliveries is low. Nevertheless,

the Board concluded that these similarities are substantially outweighed by the factors supporting a conclusion that the drivers share a distinct community of interest. In this regard, the Board particularly noted that the drivers have special driving qualifications and licensing, spend the majority of their time on the road making deliveries, wear distinct uniforms, and have contact with other employees that is only incidental to their primary job function of preparing for and making deliveries. The Board found that the possibility that drivers might be assigned to work in the store in certain circumstances and the fact that other employees might accompany drivers on deliveries did not establish a substantial interchange among drivers and other employees.

With respect to the drivers-in-training, hostlers, drivers' helpers and transportation shop employees, I similarly conclude that they do not share such a close community of interest with the distribution center employees as would mandate their inclusion in the unit. In this regard, I particularly note that they are separately supervised from the distribution center employees, do not have significant regular contact with distribution center employees, do not work in geographic proximity to the distribution center employees and I note the lack of significant interchange with other employees. Moreover, I note the unique training, qualifications and skills of the drivers-in-training, hostlers and transportation shop employees. The commonality of interests between these employees and the distribution center employees is not so great as to outweigh the factors cited above or as to preclude a finding that a unit of distribution center employees is appropriate. See, *Chin Industries*, 232 NLRB 176 (1977), in which the Board reversed a Regional Director who had concluded that the unit should include branch employees, branch drivers and rental drivers with the production and maintenance employees that the Union sought to represent. The Board noted that the commonality of interests between the various categories of employees was not such as to require the inclusion of the branch employees, branch drivers and rental drivers in the same unit

as the production and maintenance employees, notwithstanding the fact that there was a centralized labor policy, common fringe benefits and sporadic interchange of employees.

I find the cases cited by the Employer to be distinguishable from the situation herein. In *A.O. Smith*, 195 NLRB 955 (1972), a case cited by the Employer, the Board refused to sever a unit of truck drivers from a unit of production and maintenance employees. That case is distinguishable because the drivers in that case spend a substantial amount of time performing in-plant work and share the same immediate supervision as other employees. The case herein also is distinguishable from the facts in *Atchison Lumber and Logging Co.*, 215 NLRB 572 (1974), another case cited by the Employer, because in that case the drivers are used to perform the duties of other employees and, therefore, perform overlapping job functions with the other employees.

The reference by the Employer in its Post-Hearing Brief to the conclusion by the Board in a case cited as *Jensen Precast*, 2001 N.L.R.B. Lexis 179, is actually a reference to the decision of an Administrative Law Judge in an unfair labor practice case arising in Region 28. I take administrative notice of the subsequent Decision and Direction of Election issued by the Director of Region 28 in the related R case (28-RC-5972). In the Decision and Direction of Election, the Regional Director found that the conclusion by the Administrative Law Judge (which arose in the context of his dismissal of unfair labor practice cases in which the General Counsel was seeking a bargaining order) concerning the appropriateness of including truck drivers in a unit with production workers was dicta at most. Indeed, the Regional Director ultimately found that the exclusion of the truck drivers from the unit of production and maintenance employees sought by the Petitioner in that case was appropriate.

There are approximately 280 employees in the unit.

5/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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